

FINLEY F. MARTIN
JOHN C. MARTIN

IBLA 84-703

Decided May 3, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting patent application ES 32645.

Affirmed.

1. Act of August 24, 1954--Color or Claim of Title: Generally-- Color
or Claim of Title: Applications

An application for a patent under the Act of Aug. 24, 1954, commonly known as the O'Konski Act, 43 U.S.C. § 1221 (1982), is properly rejected where the applicant fails to establish that the land lies between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed.

2. Color or Claim of Title: Generally--Color or Claim of Title: Applications

Applicants for a patent under 43 U.S.C. § 1221 (1982) have the burden of proving each of the requirements for patent to the satisfaction of the Secretary of the Interior.

APPEARANCES: Finley F. Martin and John C. Martin, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Finley F. Martin and John C. Martin (appellants) have appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated May 17, 1984, rejecting their patent application ES 32645.

On June 20, 1983, appellants filed an application with BLM under the Act of August 24, 1954, commonly known as the O'Konski Act (Act), 43 U.S.C. § 1221 (1982) for a patent to certain lands in Wisconsin. Those lands were described by appellants as lot 6 NE 1/4 SW 1/4 sec. 2, T. 39 N., R. 13 E., fourth principal meridian, Forest County, Wisconsin, containing 38.86 acres.

[1] 43 U.S.C. § 1221 (1982) provides:

Whenever it shall be shown to the satisfaction of the Secretary of the Interior that a tract of public land, lying between

the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, has been held in good faith and in peaceful, adverse possession by a person, or his predecessors in interest, who had been issued a patent, prior to January 21, 1953, for lands lying along the meander line as originally determined, the Secretary of the Interior shall cause a patent to be issued to such person for such land upon the payment of the same price per acre as that at which the land included in the original patent was purchased and upon the same terms and conditions. All persons seeking to purchase lands under sections 1221-1223 of this title shall make application to the Secretary within one year from August 24, 1954, or from the date of the official filing of the plat or resurvey, whichever is later, and the Secretary of the Interior shall cause no patents to be issued for land lying between the original meander line and the resurveyed meander line until the conclusion of such periods.

43 CFR 2540.0-3(e) provides that the Act directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed.

43 CFR 2545.1(a) provides:

To qualify under the Act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

43 CFR 2545.2 sets forth each of the requirements for applications under the Act.

In its decision, BLM rejected appellants' application because it "fails to justify a claim under the above Act in that the subject property is not situated along the meander line of an inland lake or river, 43 CFR 2540.1(e)."

On appeal appellants assert ownership of lands adjoining those sought in their O'Konski Act application. Those adjoining lands are described as lot 2 NW 1/4 SW 1/4, sec. 2, T. 39 N., R. 13 E., fourth principal meridian, Forest County, Wisconsin. In support of this assertion appellants provided an abstract of title for both lots 2 and 6 and a copy of a patent for lot 2 from the United States to George Baldwin dated December 13, 1884.

Appellants further contend that each of the three requirements of 43 U.S.C. § 1221 (1982) have been met. Specifically, they state:

- (1) a patent had been issued prior to January 21, 1953, to the applicant(s) or his predecessors for lands lying along the meander line as originally determined and
- (2) the applicant(s) has

held in "good faith and peaceful adverse possession" a tract of public land, and (3) that this application was filed within one year of the date of the official filing of the survey (Exhibit I).

The original plat of survey, dated October 4, 1865, shows bodies of water in secs. 2 and 11 and an omitted area in each section. On March 11, 1982, a plat of resurvey was approved. This plat represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines designed to restore the corners in their true original locations, and the reestablishment of the record meander lines to include lands omitted from the original survey in secs. 2 and 11, and a partial subdivision of sec. 2, T. 39 N., R. 13 E., fourth principal meridian.

The field notes prepared in conjunction with the resurvey state at page 19 that "[t]here is no indication that a permanent lake ever existed in sec. 2 or that there has been any significant change in the water level in the area." The resurvey established the meander lines as a fixed and limiting boundary and lotted the omitted area. ^{1/} Since the resurvey states that no permanent lake exists in lot 2, the land sought does not lie "between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed." See 43 U.S.C. § 1221 (1982); 43 CFR 2540.0-3(e).

In addition, review of the plat of resurvey shows that lot 2 does not adjoin lot 6, rather there is an intervening lot, lot 7. Although appellants

^{1/} The resurvey was undertaken and the meander line established in accordance with section 7-84 of the Manual of Instructions for the Survey of the Public Lands of the United States (1973) which states:

"7-84. Where lands have been determined to be erroneously omitted from the original survey, the original meander line is made a fixed and limiting boundary segregating the previously surveyed areas from the unsurveyed public lands. The line is reestablished and marked with permanent monuments at the old angle points. Retracement between successive meander corners nearly always will show differences from the record in latitude and departure. The positions of the angle points are adjusted by the broken boundary method described in section 5-43 under "Angle Points of Nonriparian Meander Lines." The angle points are given serial numbers which do not duplicate numbers that may have been previously assigned in that section. The monuments are marked as shown in section 4-45.

"The position of the original meander line having been determined, the survey is extended across the unsurveyed areas. Finally, a new meander line is surveyed in the correct position." The plat of resurvey provides:

"The position of the original meander courses in secs. 2 and 11 are shown by irregular lines with numbered angle points. These lines, as originally surveyed, were grossly in error and now function as a fixed and limiting boundary. The directions and lengths of the several courses have been adjusted to the record of the original survey." No new meander line was necessary in this case because no permanent lake exists in sec. 2.

assert in their statement of reasons that one of the reasons for seeking lot 6 under the O'Konski Act is that improvements, including a cabin, have been constructed on that land, the resurvey field notes state at page 19, "There are no permanent residents within the omitted area but a cabin, owned by Finley F. Martin is located within Lot 7." The notes do not mention improvements in lot 6.

The O'Konski Act contemplates that the land sought must adjoin land lying along the meander line as originally determined. See 43 CFR 2525.2(c)(3). Here, those lands are separated by lot 7. 2/

[2] An applicant for a patent under 43 U.S.C. § 1221 (1982) has the burden of proving each of the requirements of that Act to the satisfaction of the Secretary of the Interior. Felix F. Vigil, 84 IBLA 182, 185 (1984); Richard P. Montoya, 84 IBLA 52, 56 (1984); Kim C. Evans, 82 IBLA 319, 323 (1984) (an applicant under the Color of Title Act, 43 U.S.C. § 1068 (1982), has the burden of proving that each of the requirements under the Act has been established). An applicant's failure to carry the burden of proof with respect to any one of the elements is fatal to the application. See Felix F. Vigil, supra; Richard P. Montoya, supra; Kim C. Evans, supra. Herein, appellants failed to satisfy the requirements of the O'Konski Act. BLM properly rejected their application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge.

2/ The resurvey field notes at page 20 state that lot 7 is over 50 percent swampland and overflowed. The BLM decision states that, as such, title to lot 7 inured to the State of Wisconsin under the Act of Sept. 28, 1850, as amended, 43 U.S.C. §§ 982-984 (1982).

